IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 17045 of 2005

Between:

T.C.S. Toopran Village and Mandal, Medak District,

represented by its President C.R. Rama Swamy

..... PETITIONER

AND

Prohibition & Excise Superintendent, Medak District at Sangareddy,

.....RESPONDENT

The Court made the following:

ORDER:

Questioning the action of the respondent in suspending the licences bearing Nos.7, and 109, dated 04.01.2005 and 25.04.2002 respectively issued by the respondent in favour of the petitioner vide proceedings in Cr.No.A2/1081/2005 and No.A2/1080/2005, dated 20.07.2005, the present writ petition has been filed.

The case of the petitioner, in brief, is that the petitioner is a toddy tappers

Cooperative Society and the petitioner was granted 4 licenses by the respondent for running 4 counters of toddy in Toopran village viz., 109, 7, 8 and 9. On 06.07.2005, the State Task Force inspected the licensed premises bearing Nos.109 and 7 of the petitioner and collected samples of toddy from the said two licensed premises and that when the same were tested with the prescribed chemicals by the officers of the Task Force, it was revealed that the toddy was adulterated with Chloral Hydrate and basing upon the alleged panchanama conducted by the officials, some cases have been registered against the petitioner. Thereafter, the licenses bearing Nos.109 and 7 of the petitioner were suspended by the impugned proceedings dated 20.07.2005. It is the further case of the petitioner that the officers, while taking the samples, have not followed the procedure prescribed under the Act.

The learned counsel for the petitioner contends that only after receipt of report from the Chemical Examiner, Section 31 of the A.P. Excise Act can be invoked to suspend the licenses of the petitioner, and therefore, the impugned proceedings suffers from legal infirmities.

The learned Government Pleader for Prohibition and Excise contends that under Section 52 (c) of the A.P. Excise Act, 1968 the inspecting official has exercised the power to test the toddy in question and found to be adulterated and therefore, it is purely within the powers of the excise officials, and hence, the impugned suspension of license pending further enquiry, does not suffer from any infirmities.

The amended Rule 24 of A.P. Excise Act, 1968 issued in M.No.ER2/69, Revenue, dated 7.11.1969 speaks about the manner of taking sample of arrack or toddy, for the purpose of analysis. Provided that any positive analysis report will constitute sufficient cause for the purpose of exercising the power under Section 31 of the Andhra Pradesh Excise Act, 1968 by the authority granting license or permit to safeguard the public health. Therefore, this rule provides

that the action has to be initiated after the receipt of the report from the analysis. But, Section 52 of the Act, reads as follows:

> ***Power to enter and inspect places of manufacture and sale**:*
>
> *The Commissioner or a Collector or any Prohibition and Excise Officer not below such rank as may be prescribed, or any Police Officer duly empowered in that behalf may,*
>
> a. *enter and inspect, at any time, by day or by night, any place in which any licensed manufacturer, manufactures or stores any intoxicant, and*
>
> b. *enter and inspect at any time within the hours during which sale is permitted, and at any other time during which the same may be open, any placed in which any intoxicant is kept for sale by any person holding a licence under this Act; and*
>
> c. *examine the accounts and registers, and examine, test, measure or weigh any material, stills, utensils, implements, apparatus, or intoxicant found in such place.*

A plain reading of Section 52 (c) of the Act clearly indicates that such a power to test the sample was given to the authority, who is duly empowered. The impugned proceedings shows that a spot test has been conducted by the Task Force Officials on 06.07.2005 on the samples of toddy, which, *prima facie*, shows the adulteration of Chloral Hydrate. However, since the presence of Chloral Hydrate has to be determined and tested by the Chemical Analyst, one of the samples has been forwarded to the Chemical Examiner for determination of the adulteration. So, *prima facie*, when the toddy is adulterated with Chloral Hydrate, the suspension order passed by the Prohibition and Excise Superintendent, dated 20.07.2005, pending enquiry is not *ultra vires*. Therefore, the order under challenge does not suffer from any infirmities, either

legal or factual, warranting interference of this Court under Article 226 of the Constitution of India. Therefore, the writ petition is totally devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

_____

(K.C. BHANU, J)

Date: 29.08.2005

Ksn